

No.14,821

IN THE

**United States Court of Appeals  
For the Ninth Circuit**

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KARL W. LINES,

*Appellant,*

VS.

FALSTAFF BREWING Co., et al.,

*Appellees.*

**BRIEF FOR APPELLANT.**

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## Subject Index

	Page
Statement of jurisdiction.....	1
Statement of the case.....	2
Specification of errors.....	4
Argument .....	6
1. The District Court erred in finding that “there is no evidence to support the referee’s finding that the votes of said petitioners represented an attempt by them to retain some sort of control over the bankrupt estate for the benefit of said board of trade”, for the reason that the finding by the referee to the contrary was not clearly erroneous but was supported by substantial evidence and reasonable inferences. (Specification of Error No. 1.).....	6
2. The District Court erred in concluding that “said referee in bankruptcy exercised his discretion to disapprove the election of said John M. England as trustee of the above estate without good cause therefor, for the reason that the conclusion is contrary to the law and the evidence. (Specification of Error No. 2.).....	7
3. The District Court erred in concluding that “said petitioners were not disqualified from voting for their said nominee as such trustee herein and should not be disenfranchised upon any of the grounds offered by the creditors whose claims voted for said Karl W. Lines as such trustee and/or by said referee in bankruptcy in his said findings and order dated May 26, 1954”, for the reason that the conclusion is contrary to the law and the evidence. (Specification of Error No. 3.) .....	8
4. The District Court erred in reversing the order appointing appellant trustee and in ordering the appointment of John M. England as trustee. (Specification of Errors Nos. 4 and 5.).....	8
Conclusion .....	8

## Table of Authorities Cited

Cases	Page
Delno v. Market St. Ry. Co., 9 Cir. 124 F. 2d 965.....	7
Earhart v. Callan, 9 Cir. 221 F. 2d 160.....	7
Gamewell Company v. City of Phoenix, 9 Cir. 216 F. 2d 928	7
In re Deena Woolen Mills, D.C.Me. 114 F. Supp. 260.....	6
In re Leader Mercantile Co., 5 Cir. 36 F. 2d 745.....	6
In re Los Angeles Lumber Products Co., D.C.Cal. 46 F. Supp. 77 .....	6
In re Stowe, D.C.Cal. 235 F. 463.....	6
Lagnes v. Green, 282 U.S. 531, 51 S.Ct. 243, 75 L.Ed. 520..	7
Larson v. First State Bank, 8 Cir. 21 F. 2d 936.....	6
Pepper v. Litton, 308 U.S. 293, 60 S.Ct. 238, 84 L.Ed. 281	6
Sloan's Furriers v. Bradley, 6 Cir. 146 F. 2d 757.....	6
Wilson v. Continental Building & Loan Assn., 9 Cir. 232 F. 2d 824 .....	6

## Statutes

11 U.S.C.A., Section 47.....	2
11 U.S.C.A., Section 48.....	2
11 U.S.C.A., Section 67(e).....	1

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**BRIEF FOR APPELLANT.**

**STATEMENT OF JURISDICTION.**

The referee in bankruptcy made an order, dated May 26, 1954, appointing appellant trustee in bankruptcy in the matter pending in the District Court and entitled "In the Matter of Alfonso Paul Sanfillipo, Bankrupt". R. 46-55. Appellees' petition to have the order reviewed by the District Court was filed June 7, 1954. R. 67-68. The petition was timely. 11 U.S.C.A., §67 (c). The District Court had jurisdiction to review the order. 11 U.S.C.A. §67 (c). It made an order on May 25, 1955, reversing the order of the referee appointing appellant trustee and ordered the appointment of one John M. England as trustee. R. 94-97. Notice of appeal therefrom to

this court was filed June 13, 1955. R. 98. The appeal was timely. 11 U.S.C.A. §48. Jurisdiction of this court to review the order of the District Court is sustained by 11 U.S.C.A. §47.

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### STATEMENT OF THE CASE.

Appellant and England were rival candidates for election as trustee at the meeting of the bankrupt's creditors held May 20, 1954. The statement of affairs filed by the bankrupt on April 26, 1954 (R. 10-27) showed that on December 17, 1953, he had made an assignment of all his assets to the Board of Trade of San Francisco for the benefit of creditors. R. 14. It also showed that the Board of Trade had in its hands \$4,054.88 belonging to the bankrupt. R. 13. The assignment mentioned had been taken in the name of Walter J. Hempy the secretary of the said Board of Trade.

In contemplation of the said meeting various members of the said Board of Trade as a Creditors' Committee sent out to the creditors of the bankrupt a form letter on the letterhead of the said Board of Trade soliciting their cooperation in the selection of a trustee and also soliciting their signatures to a letter of attorney running in favor of Shapro & Rothschild, attorneys for the Committee. R. 49. Claims of creditors thus solicited, obtained, and represented were disqualified by the referee and rejected in the vote for trustee and the appointment of appellant rather than England resulted. R. 28-30. Among the findings of

fact and conclusions of law made by the referee in his order appointing appellant trustee, were these:

“(9) That in causing to be prepared and sent out the aforesaid letter and each of the aforesaid nineteen (19) claims, in the manner and under the circumstances aforesaid, it was the intent, on the part of said Creditors’ Committee, acting for said Board of Trade, indirectly to keep, if possible, some sort of control over the assets of the estate of the above-named bankrupt, at least to the extent of such assets as were in the hands of Walter J. Hemy and/or said Board of Trade.

(10) That, in the light of all the circumstances, it would not be, nor is it, for the best interest of all the creditors of Alfonso Paul Sanfillipo, and particularly the creditors who, or which, are not members of said Board of Trade to count the claims procured in the manner, and under the circumstances aforesaid, in voting for any candidate for trustee in the above-entitled manner. \* \* \*

Because of the state of the record herein and, in the light of all the circumstances shown by said record, the court concludes:

(1) That Karl W. Lines has a majority, both in number and in amount of the claims of creditors which are entitled to be counted herein to be voted for trustee.

(2) That, to allow any of the aforesaid nineteen (19) claims to be voted for any candidate for the herein trusteeship would be for the court to act contrary to the dictates of sound judicial discretion and also contrary to good practice in the bankruptcy court of this jurisdiction.” (R. 52-54.)



The order of the District Court on review reversed the order of the referee appointing appellant trustee and appointed England trustee. R. 94-97. This was the vital finding of fact (R. 96):

“(4) That there is no evidence to support the Referee’s finding that the votes of said Petitioners represented an attempt by them to retain some sort of control over the bankrupt estate for the benefit of said Board of Trade.”

And the vital conclusions of law were these (R. 96):

“(1) That said Referee in Bankruptcy exercised his discretion to disapprove the election of said John M. England as Trustee of the above estate without good cause therefor.

(2) That said Petitioners were not disqualified from voting for their said nominee as such Trustee herein and should not be disenfranchised upon any of the grounds offered by the creditors whose claims voted for said Karl W. Lines as such Trustee and/or by said Referee in Bankruptcy in his said Findings and Order dated May 26, 1954.”

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#### **SPECIFICATION OF ERRORS.**

1. The District Court erred in finding that “there is no evidence to support the Referee’s finding that the votes of said Petitioners represented an attempt by them to retain some sort of control over the bankrupt estate for the benefit of said Board of Trade”, for the reason that the finding by the referee to the



contrary was not clearly erroneous but was supported by substantial evidence and reasonable inferences.

2. The District Court erred in concluding that "said Referee in Bankruptcy exercised his discretion to disapprove the election of said John M. England as Trustee of the above estate without good cause therefor", for the reason that the conclusion is contrary to the law and the evidence.

3. The District Court erred in concluding that "said Petitioners were not disqualified from voting for their said nominee as such Trustee herein and should not be disenfranchised upon any of the grounds offered by the creditors whose claims voted for said Karl W. Lines as such Trustee and/or by said Referee in Bankruptcy in his said Findings and Order dated May 26, 1954", for the reason that the conclusion is contrary to the law and the evidence.

4. The District Court erred in reversing the order of the referee dated May 26, 1954, appointing appellant trustee of the estate of the said bankrupt.

5. The District Court erred in ordering the referee to make and enter an order approving the election and appointing John M. England trustee of the estate of the said bankrupt.

## ARGUMENT.

1. THE DISTRICT COURT ERRED IN FINDING THAT "THERE IS NO EVIDENCE TO SUPPORT THE REFEREE'S FINDING THAT THE VOTES OF SAID PETITIONERS REPRESENTED AN ATTEMPT BY THEM TO RETAIN SOME SORT OF CONTROL OVER THE BANKRUPT ESTATE FOR THE BENEFIT OF SAID BOARD OF TRADE", FOR THE REASON THAT THE FINDING BY THE REFEREE TO THE CONTRARY WAS NOT CLEARLY ERRONEOUS BUT WAS SUPPORTED BY SUBSTANTIAL EVIDENCE AND REASONABLE INFERENCES. (Specification of Error No. 1.)

A bankruptcy court is a court of equity and the broad principles and rules of equity jurisprudence govern and apply in the administration of a bankrupt's estate. (*Pepper v. Litton*, 308 U.S. 293, 304, 60 S.Ct. 238, 244, 84 L. Ed. 281.)

In the application of those equitable principles and rules in the appointment of a trustee for the bankrupt estate, a wide discretion is confided to the referee in bankruptcy, for the law demands not only an impartial trustee but a trustee remote and immune from possible adverse interest. (*Sloan's Furriers v. Bradley*, 6 Cir. 146 F. 2d 757, 758-759; *In Re Leader Mercantile Co.*, 5 Cir. 36 F. 2d 745, 746; *Larson v. First State Bank*, 8 Cir. 21 F. 2d 936, 938; *Wilson v. Continental Building & Loan Assn.*, 9 Cir. 232 F. 2d 824, 827-828; *In Re Deena Woolen Mills*, D.C.Me. 114 F. Supp. 260, 267-270; *In Re Los Angeles Lumber Products Co.*, D.C.Cal. 46 F. Supp. 77, 87-88; *In Re Stowe*, D.C.Cal. 235 F. 463, 464.)

On the evidence before him and the reasonable inferences therefrom the referee could rationally find and did find that the claims voting for England as

trustee were solicited and sponsored by the Board of Trade of San Francisco, assignee of the bankrupt for the benefit of creditors, and the holder of assets of the bankrupt for which it would be accountable to the trustee of the bankrupt estate. There was no abuse of discretion here. (*Lagnes v. Green*, 282 U.S. 531, 541, 51 S.Ct. 243, 247, 75 L.Ed. 520, 525; *Delno v. Market St. Ry. Co.*, 9 Cir. 124 F. 2d 965, 967.)

On review, the law demanded that the District Court accept the findings of the referee since they were not clearly erroneous. (*Earhart v. Callan*, 9 Cir. 221 F. 2d 160, 164-165; *Gamewell Company v. City of Phoenix*, 9 Cir. 216 F. 2d. 928, 931.) The District Court did not do so. It erred in setting aside the findings of the referee and its finding to the contrary, here challenged, is clearly erroneous and against the law and the evidence.

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2. THE DISTRICT COURT ERRED IN CONCLUDING THAT "SAID REFEREE IN BANKRUPTCY EXERCISED HIS DISCRETION TO DISAPPROVE THE ELECTION OF SAID JOHN M. ENGLAND AS TRUSTEE OF THE ABOVE ESTATE WITHOUT GOOD CAUSE THEREFOR, FOR THE REASON THAT THE CONCLUSION IS CONTRARY TO THE LAW AND THE EVIDENCE. (Specification of Error No. 2.)

The vitality of the conclusion of law above quoted depended upon the vitality of the finding of the District Court discussed in the preceding subdivision. The demonstration there that such finding was clearly erroneous is equally a demonstration here that the above conclusion of law is contrary to the law and the evidence.

3. THE DISTRICT COURT ERRED IN CONCLUDING THAT "SAID PETITIONERS WERE NOT DISQUALIFIED FROM VOTING FOR THEIR SAID NOMINEE AS SUCH TRUSTEE HEREIN AND SHOULD NOT BE DISENFRANCHISED UPON ANY OF THE GROUNDS OFFERED BY THE CREDITORS WHOSE CLAIMS VOTED FOR SAID KARL W. LINES AS SUCH TRUSTEE AND/OR BY SAID REFEREE IN BANKRUPTCY IN HIS SAID FINDINGS AND ORDER DATED MAY 26, 1954", FOR THE REASON THAT THE CONCLUSION IS CONTRARY TO THE LAW AND THE EVIDENCE. (Specification of Error No. 3.)

The argument in the preceding subdivision is applicable here. It need not be repeated.

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4. THE DISTRICT COURT ERRED IN REVERSING THE ORDER APPOINTING APPELLANT TRUSTEE AND IN ORDERING THE APPOINTMENT OF JOHN M. ENGLAND AS TRUSTEE. (Specification of Errors Nos. 4 and 5.)

The order of the District Court crumbles in such respects when it is devitalized of the findings and conclusions of law previously discussed. This is so obvious that additional argument is unnecessary.

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**CONCLUSION.**

Appellant therefore respectfully submits that the order appealed from should be reversed with directions to the District Court to affirm the order of the referee.

Dated, San Francisco, California,  
January 16, 1956.

MAX H. MARGOLIS,  
*Attorney for Appellant.*



